

SB 166 - PGCEX - Support - 1.21.2021.pdf

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THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: **Senate Bill 166 - Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland Police Accountability Act)**

SPONSOR: **Senator Sydnor, *et al.***

HEARING DATE: **January 21, 2021**

COMMITTEE: **Judicial Proceedings**

CONTACT: **Intergovernmental Affairs Office, 301-780-8411**

POSITION: **SUPPORT**

The Office of the Prince George's County Executive **SUPPORTS Senate Bill 166 - Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland Police Accountability Act)** which requires a police officer to report misconduct to their own supervisor or the chief of the law enforcement agency in which they are employed if they have actual knowledge that another police officer has engaged in:

- Homicide,
- The use of excessive force,
- A sexual crime,
- Theft or a related crime,
- Perjury,
- Fraud or a related crime, or
- Tampering with or fabricating physical evidence.

Police officers are entrusted with protecting the community against those who would seek to harm us. It is an unfortunate reality that at times that means officers must protect against fellow officers who would abuse the authority we have entrusted in them. Ensuring that police officers hold fellow officers to the same standards they would hold a member of the public ensures a consistent application of the law; such accountability is vital in maintaining the trust of the community. This has already

been mandated in the Prince George's County Police Department, where General Orders require police officers to report the misconduct of other police officers.

For these reasons, the Office of the Prince George's County Executive **SUPPORTS Senate Bill 166** and asks for a **FAVORABLE** report.

SB0166 - Criminal Procedure - Police Officers - Du

Uploaded by: Bock-Singleton, Natasza

Position: FAV

January 19, 2021

Testimony in Support of SB0166 - Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland Police Accountability Act)

Honorable Members of the Judicial Proceedings Committee:

I submit this testimony in support of SB0166 as a victim of assault and harassment by Baltimore City Police members. From 1998 until 2018 I was an engaged Baltimore City resident, community leader, youth group leader, and active supporter of the police department. While there were occasional issues with poor performance in the department that impacted our community, there were no major issues. In 2018 a Baltimore officer identified me as someone who provided information about misconduct issues. The subsequent harassment and intimidation efforts by BPD members and their collaborators resulted in my family relocating to a safer environment.

In 2020, through the efforts of fellow residents and community leaders, private investigators, and law enforcement from jurisdictions outside Baltimore City, I was able to participate in mediation with some of the officers involved. While I am unable to share all the information learned in mediation due to confidentiality agreements, I can share the following in support of SB0166:

1. Multiple Baltimore City Police officers and supervisors were aware of intimidation and harassment activity committed over the course of two years by four Baltimore City officers and their collaborators against nine residents. The officers aware of the activity DID NOT report the activity to supervisors because
 - a. The officer believed reporting misconduct would have no positive impact “nothing will be done” and “this city is a [expletive] anyway, it doesn’t matter”,
 - b. The officer was concerned the Fraternal Order of Police would retaliate against the reporting officer “the union will have my [expletive]”,
 - c. The officer knew a higher-ranking BPD member was involved and was concerned for his own job “[name redacted] would have me fired”,
 - d. The officer was concerned for his own safety “I would wind up in Shock Trauma like you”,
 - e. The officer believed there was no valid method to report misconduct he witnessed “who do I tell? IAD won’t do anything but tell [name redacted] I reported him”,
 - f. The officer felt no legal or ethical obligation to report “why?”.
2. Two Baltimore City Police officers resigned after witnessing misconduct, indicating they felt there was no way to report misconduct but also no way to continue working with the department and remain ethical.
3. The number of officers aware of at least one instance of reportable misconduct is high compared to total staff.

There is currently no incentive for officers to report misconduct, the implementation of the Ethical Policing is Courageous program in Baltimore City is slow and ineffective. Officers who witness misconduct have no reason to report it, and are often incentivized to aid in covering up incidents. This has led to a department with rapidly decreasing integrity as officers who routinely violate policy are not reprimanded or removed from service, dishonest officers continue to influence new recruits, and officers with strong ethics are not able to stomach working with such a department and leave for jurisdictions with higher standards.

I strongly encourage you to support SB0166 to provide officers incentive to report misconduct, and begin the steps towards increased accountability in police departments.

Respectfully submitted,

Natasza Bock-Singleton,

President and Founder, Bloom and Grow

SB0166 Duty to Report.pdf

Uploaded by: Britt, Adiena

Position: FAV

SB0166 Criminal Procedure - Police Officers - Duty to Report Misconduct

Stance: Support

Testimony: My name is Adiena C. Britt and I reside in the 45th Legislative District of Baltimore City. I am writing to offer my support of SB0166 as part of the MD Police Reform Act of 2021. Currently, there is a culture of silence that permeates Law Enforcement that allows misconduct to go unchecked. This “Blue Code of Silence” needs to cease to exist. Silence condones violence, and failure of Law Enforcement to uphold the law by reporting misconduct that they witness at the hands of a colleague should not be tolerated.

The Public is always accosted with the phrase “If you see something, say something.” Yet law enforcement officers cover law breaking for each other with a cloak of silence. I am in full support of an end being brought to this practice. Monetary fines will serve as a deterrent for this abhorrent conduct to continue. Keeping quiet about abuses of their fellow officers only serves to tarnish their own credibility and enforces a mistrust from the general public. No one should be above the law.

Please allow this to pass through to the full Senate and House for voting so it can become the law and part of sorely needed Police Reforms in our State.

Thank you.

Adiena C. Britt

6014 Old Harford Rd, Baltimore, MD 21214

Sydnor Testimony for SB 166 Criminal Procedure – P

Uploaded by: Clark, Eugene

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for SB 166
Criminal Procedure – Police Officers – Duty to Report Misconduct
(Maryland Police Accountability Act)
Before the Judicial Proceedings Committee

Good afternoon Mr. Chair and committee:

This General Assembly has passed variety of laws containing a number of statutory reporting obligations. Mandatory reporting obligations applied to certain professionals have included duties to report information regarding infectious or contagious diseases,¹ abuse of developmentally-delayed individual,² abuse or neglect of vulnerable adults,³ known threats of imminent physical injury,⁴ and injuries apparently caused by auto accidents, lethal weapons, gunshots, and moving vessels.⁵

In 2016 we mandated law enforcement agencies to require a law enforcement officer who was involved in a use of force incident in the line of duty to file an incident report (Use of force incident reports) regarding the use of force by the end of the officer's shift unless the officer is disabled.⁶ What happens when these reports are not filed are a matter of departmental policy and that may make some sense.

As recently as last year, we unanimously passed legislation creating a misdemeanor for a worker to knowingly fail to provide a required notice or make a required report of suspected child abuse or neglect if the worker has actual knowledge of the abuse or neglect. Included on this list of mandatory reporters along with Health care practitioners, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, were police officers. We made a policy decision that this type of reporting was so important, that we made the failure to do so a misdemeanor and subject to a maximum penalty of up to three years imprisonment and/or a \$10,000 fine.⁷ As noted earlier, it established that law enforcement file these use of force reports, but what should happen when that use of force exceeds what is reasonable? Precedent has been established that when we deem such reporting important as a matter of public policy, we have made the failure for a mandatory reporter to do so a misdemeanor.

This bill requires a police officer with actual knowledge of misconduct committed by another police officer to report this misconduct. The types of misconduct included in the bill are homicide, sexual crimes, theft, perjury, fraud, and tampering with or fabricating evidence. An officer with knowledge of another officer

¹ Health-General §18-201; Health-General §18-205; Health-General §18-207; and Health-General §18.201.1.

² Health-General §7-1005.

³ Family Law §14-302.

⁴ Courts & Judicial Proceedings §5-6099(c)(2).

⁵ Violations of Health-General §20-701, Health General §20-702, and Health General §20-703 are misdemeanors.

⁶ Pub Safety § 3-514.

⁷ HB787 for 2019 Session.

using excessive force must also report this action. Excessive force is defined as force that, under the totality of the circumstances, is objectively unreasonable. Police officers will report misconduct to their own supervisor or the chief of the agency that employs the reporting officer.

In this respect, this bill is similar to our mandatory reporting bill for child abuse or neglect. Outside of the use of excessive force, the types of conduct this bill requires to report are already statutory crimes that one should expect police not only to report, but should really be making an arrest in. A police officer's duty include arresting civilians who have committed crimes and this expectation should not be different when a police officer has broken the law. In its 2016 investigation, the Department of Justice expressed concern about the Baltimore City Police Department's use of excessive force, and these concerns were "compounded by BPD's ineffective oversight of its use of force."⁸ I do not believe it is asking too much for a police officer that has actual knowledge that that a fellow officer has engaged in excessive force or committed one of these enumerated crimes to carry out their responsibility and report the crime.

Police departments throughout Maryland have fostered a culture of officers protecting one another when they know that their colleagues have committed unlawful or inappropriate behavior. In its 2016 investigative report the Department of Justice described how Baltimore City Police personnel "discourage[d] complaints from being filed" within the department and "conduct[ed] little or no investigation" into complaints that were reported.⁹ This culture must be eliminated. Public safety is at risk when the officers who are supposed to promote public safety shield their peers who are guilty of dangerous conduct.

In closing, the expectation for law enforcement to act lawfully is a low bar that our police departments still struggle to meet. Requiring a duty to report misconduct by other officers is a necessary measure to ensure officers are held accountable for their actions. Enacting a duty to report will create better accountability within police departments to deal with officers responsible for using excessive force against civilians.

⁸ "Investigation of the Baltimore City Police Department." *U.S. Department of Justice, Civil Rights Division*, 9 (August 10, 2016).

⁹ "Investigation of the Baltimore City Police Department." *U.S. Department of Justice, Civil Rights Division*, 10 (August 10, 2016).

Testimony for MD Misconduct Bill_SB0166_Ray.pdf

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Position: FAV

TESTIMONY FOR

SB0166: Criminal Procedure – Police Officers – Duty to Report Misconduct (Maryland Police Accountability Act of 2021)

Dr. Rashawn Ray

Professor of Sociology, University of Maryland, College Park
Executive Director, Lab for Applied Social Science Research (LASSR)
David M. Rubenstein Fellow, Governance Studies Department, The Brookings Institution
rray@brookings.edu

I am honored to testify regarding SB0166: Criminal Procedure – Police Officers – Duty to Report Misconduct (Maryland Police Accountability Act of 2021). I am a David M. Rubenstein Fellow at The Brookings Institution. I am also a Professor of Sociology at the University of Maryland and the Executive Director of the Lab for Applied Social Science Research (LASSR). LASSR is a research center that regularly partners with government agencies, organizations, and corporations to conduct objective research evaluations and develop innovative research products such as our virtual reality decision-making program for police officers and incarcerated people.

I have researched policing for a decade, conducted implicit bias trainings with thousands of officers, including in Maryland and with the Department of Homeland Security, and consulting with cities and counties on police reform across the country. I also regularly testify at the federal level and within cities and states (e.g., Maryland, Virginia, Pennsylvania) on law enforcement. In addition to my research, I should note that I come from a law enforcement and military family. My great-uncle was the first Black Chief of Police of my hometown of Murfreesboro, TN and I have other relatives who are police officers as well. My grandfather served in two wars and was awarded a Purple Heart and Bronze Star for his service. My mother was admitted to West Point in the late 1970s. Though my family lineage did not influence my research on policing, it definitely shapes my level of empathy and understanding for the hard work and dedication of law enforcement. It also helps me to know what equitable policing looks like.

This legislation aims to establish a state-wide database for law enforcement officer misconduct and mandates that officers report bad behavior. This is an important piece of legislation and will situate the state of Maryland as being in line with best practices to create equity, transparency, and accountability in policing. It aligns most closely with The George Floyd Justice in Policing Act that passed the House of Representatives in June 2020 on what would have been Tamir Rice's 18th year-old birthday. Rice would be a freshman in college right now.

On November 22, 2014, 12-year-old Tamir Rice was shot and killed by police in Cleveland, Ohio. While playing with a toy gun in a park, 26-year old officer Timothy Loehmann shot Rice within seconds of arriving at the park. In 2016, the city of Cleveland settled with the Rice family for \$6 million. Loehmann was ultimately fired from the police department in 2017 for failing to

conceal information from a previous job with Independence Police Department. Rather than be fired from Independence, Loehmann resigned after he was evaluated as not being able to follow basic commands, losing composure easily, and being easily distracted. In 2018, Loehmann was hired by Bellaire Police Department, but he decided to resign after petitions for his firing. Frank Garmback, the officer with Loehmann when he killed Rice, had a \$100,000 excessive force lawsuit settled in 2014. A woman who called police about a car blocking her driveway ended up being put in a chokehold and beaten by Garmback. This incident does not appear in his personnel file.

But Maryland has its own example. In September 2018, 19-year-old Anton Black was killed by Greensboro Police officer Thomas Webster. Webster previously worked as an officer in Dover, Delaware and left that department after a dash camera showed him kicking an unarmed Black man on the ground and breaking his jaw. Webster was acquitted of assault but left the department. After a settlement, Webster was banned from seeking employment in the city of Dover. He went across state lines and started working in Greensboro, MD. This is where he killed Black. If this database existed, Greensboro Police Department might have made a different decision about hiring Webster and Black would still be alive.

Collectively, my research indicates that many people may still be alive if they did not encounter the officers who killed them. Tamir Rice in Ohio should still be alive. Antwon Rose in Pennsylvania should still be above. George Floyd in Minnesota should still be alive. And, Anton in Maryland should still be alive. All of these officers would be on a misconduct list established by this legislation.

The Duty to Report Misconduct Bill will ensure that officers who engage in misconduct cannot simply resign or be fired and go work for another law enforcement agency. This is how bad apples rotten the tree of policing. When people apply to be an officer, part of their background check should be ensuring they are not on this list.

My research further shows this bill will protect good police officers who are often times forced to continue working with officers they know are not suitable for the profession. Protecting good police so they can protect and serve their communities should be the focus. This legislation gets the state of Maryland closer to this goal.

Reporting at the state level is central to having additional accountability beyond what happens within departments or local municipalities. State oversight protects officers who report bad behavior. Officers who wish to report bad behavior should not face internal stigma and sanctions for doing what cops should do—monitor bad behavior and ensure that wrongdoers, whether inside a police department or not, are held accountable. My research shows that officers who report bad behavior are less likely to be promoted, more likely to be transferred, and more likely to face internal stigma and sanctions. This is the case with the group of officers in Prince George's County who bravely spoke up about racial and gender discrimination within the department.

Maryland can be a leader in establishing state-wide databases for misconduct and mandating reporting by law enforcement. Eventually, this will become common practice at the federal level and Senator Sydnor's legislation places Maryland as a national leader in this space.

References

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Ray, Rashawn. 2020. "The Killing of Ahmaud Arbery Highlights the Danger of Jogging While Black." [The Conversation](#) (5/7/20)

Testimony SB 166 Deborah Katz Levi.pdf

Uploaded by: Clark, Eugene

Position: FAV

Deborah Katz Levi
Director of Special Litigation
Baltimore City Felony Trial Division
Maryland Office of the Public Defender

Written Testimony Senate Bill 166 – Duty to Report Misconduct

“It is curious that physical courage should be so common in the world and moral courage so rare.”
—Mark Twain

The Duty to Report Misconduct codifies the duty to live with a higher moral code while policing in Maryland. The concept, a duty to report, is not new to certain professions. There was no political controversy that I am aware of when Rule 8.3 was established, which created the Duty to Report Misconduct amongst lawyers and judges. The rule, in its entirety, is titled Reporting Professional Misconduct, Maintaining the Integrity of the Profession. As a young lawyer, having to pass the professional responsibility exam, it was deeply ingrained in me from the beginning of my professional experience that I have an affirmative duty to report a lawyer or a judge who engages in misconduct in front of me. This duty relieves me of the guilt, fear, or hesitation that might otherwise derail the moral requirement that I report someone more senior than me, or someone with more authority than I have.

I know, first hand, the importance that this requirement had on me when I summoned the courage to report judicial misconduct against a long-time judge. As one of the newest lawyers to my jurisdiction, it was the most courageous act I could take on, to report a veteran judge on the bench for his humiliating acts of misconduct that most clearly interfered with the administration of justice. I knew that to do so could create enemies, injure my career, and result in a negative backlash, but my moral compass encouraged it, and my professional duty empowered it.

Without that obligation, the affirmative duty to report, and the consequences that could be imposed by my failure to do so, there is likely no way I would have summoned the courage as a new lawyer in Maryland to complain about the conduct of a senior judge on the bench. My bravery was supported by the rules and the laws of my profession. It enabled me to take action against someone more senior than me, someone more powerful than me, and someone with far more authority than I might ever have. And while the Commission on Judicial Disabilities ended up agreeing with me, I did not know that at the time I had to summons the courage to make the report.

The misconduct that this law, Senate Bill 166, is aimed at preventing is far more insidious than words in a courtroom hurled by a judge. The misconduct that this law aims to eliminate is most often violence, and sometimes, tragically, death. There is a sad and unfortunate truth that our country is reconciling with right now, that police are not always good, and that policing gone wrong can have disastrous effects on people and our communities. And Maryland is no exception.

While we are familiar with stories in our state's history that have ended tragically at the hands of police violence, including Anton Black and William Green, there are other less known instances that happen regularly, born out of a strong code of silence that law enforcement officers all too often afford each other. And anyone who tells you otherwise, that there is no code of silence amongst law enforcement, is simply not telling you the truth.

In fact, in acknowledgement of this truth, the strong and historical code of silence, police departments across the county have embraced new trainings aimed at dismantling it. Yet they realize that in order to do so, in order to change that code, they must change their culture. But changing culture takes time and courage. Teaching young officers that they are empowered to report and intervene on a more senior officers' acts of misconduct is not something that is going to happen overnight, but it is something the legislature has the power to assist with.

In Baltimore and New York and in jurisdictions across the country, police departments are implementing the ABLE Training, Active Bystandership for Law Enforcement, which is aimed specifically at preventing and stopping harmful behavior by a fellow police officer. Imposing a criminal sanction on the failure to report misconduct only bolsters the officers' courage to report and will directly help change the culture of law enforcement from one that worked in the past to cover things up to one that works together to stop events from happening. As Baltimore Police Commissioner Michael Harrison said on NPR in July of 2020, this type of police training shifts loyalty from after a bad event happens, to its proper place, before the event takes place. It helps officers hold each other accountable and keep each other out of trouble, by making the failure to report part of the trouble itself.

It is the sad and unfortunate reality that the courage to report misconduct does not ooze from law enforcement. But it is the opposite reality that the legislature has the power to make it so, to pass the law that gives the younger, less senior, and less experienced officer the duty and the responsibility to report the misconduct they observe, so that they can enjoy the privilege of holding onto their role in their

profession, while also maintaining its integrity. As a result, I respectfully ask that the legislature pass Senate Bill 166 in its entirety. Thank you.

Legislative Testimony SB166.pdf

Uploaded by: Elliott, Richard DeShay

Position: FAV

Legislative Testimony:
SB166

I support Senator Sydnor's Senate Bill 166 to expand police accountability.

**RICHARD
ELLIOTT**
FOR MARYLAND

By Authority: Rich Elliott For Maryland Keanu Smith-Brown, Campaign Chair Christian Hillian, Treasurer

2021-01-21 SB0166 (Support Final).pdf

Uploaded by: Jung, Roy

Position: FAV

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January 21, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: SB 166 – Criminal Procedure - Police Officers - Duty to Report Misconduct
(Maryland Police Accountability Act) – **Letter of Support**

The Office of Attorney General urges the Committee to report favorably on SB 166. Senate Bill 166 requires a police officer to report specified criminal conduct of another officer if the reporting officer has actual knowledge of the criminal conduct. Also, SB 166 establishes a penalty of imprisonment not exceeding five years or a fine not exceeding \$10,000 or both.

Senate Bill 166 allows our State to take up police reform by putting a practical limitation to the use of excessive force. Senate Bill 166 requires a police officer to report a specified criminal conduct of another officer. An officer is best positioned to know of another officer's misconduct, but officers frequently do not report misconduct because of the existence of the code of silence.¹ Senate Bill 166 overcomes this barricade because it creates a mandatory reporting requirement. This requirement does not interfere with police officers conducting their official duties, but is to prevent horrible outcomes and to support and encourage the majority of the officers who responsibly perform their work.²

¹ See Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 U. CHI. LEG. F. 125, 182-84 (2016).

² See *id.*, at 184 (“When an officer commits misconduct, a fellow officer who witnesses the abuse must lie when called to give a statement, either by falsely stating . . . [or] denying [misconduct], or providing a false justification for the officer's conduct [because] officer's failure to adhere to the code can jeopardize her career, safety, and even her family.”).

In addition to Senate Bill 166, the Office of the Attorney General urges this Committee to also consider other common sense preventative measures to end the use of excessive force such as, requiring a police officer to use de-escalation techniques and intervene to stop another officer from using excessive force.³ and requiring agencies to report all use of force incidents, internally and externally review these incidents, and track these incidents.⁴ Imposition of these additional preventative measures will allow our State to accomplish meaningful police reform to end the use of excessive force by creating a transparent system that holds officers accountable for their misconduct.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 166.

cc: Members of the Judicial Proceedings Committee

³ This requirement is also known as the duty to intervene. Expressly creating this duty would help to prevent officers from committing misconduct because of potential for sanctions. In general, officers consider potential for sanctions before performing any action. See Lawrence Rosenthal, *Good and Bad Ways to Address Police Violence*, 48 URB. LAW. 675, 717 (2016). Officers knowing that another officer may intervene against their conduct and possibility of sanctions will minimize the use of excessive force because officers will be more cautious before performing any action.

⁴ See, e.g., Futterman, Hunt & Kalven, *supra* note 1, at 175-9 (stating general principles and exemplary investigation model for a transparent and credible investigations).

MD Catholic Conference_FAV_SB0166.pdf

Uploaded by: Kraska, MJ

Position: FAV



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

January 21, 2021

**SB 166
Criminal Procedure – Police Officers – Duty to Report Misconduct**

Senate Judicial Proceedings Committee

Position: Support

The Maryland Catholic Conference offers this testimony in SUPPORT of legislative proposal Senate Bill 166. The Conference represents the public policy interests of the three (arch) dioceses serving Maryland, including the Archdioceses of Baltimore and Washington and the Diocese of Wilmington, which together encompass over one million Maryland Catholics.

Senate Bill 166 would require a police officer to report the conduct of another police officer to a supervisor or agency chief when the officer has actual knowledge of a number of malfeasances, including but not limited to homicide, use of excessive force, sex crimes, or other acts of mistrust such as theft, perjury, fraud or tampering with evidence.

The Conference supports Senate Bill 166 as a means for meaningful reform in combating police misconduct and restoring community trust in policing. In the June, 2020, the Bishops of Maryland wrote a letter on racial justice *Building Bridges of Understanding and Hope*, which stated that the “unjust killing of George Floyd and other Black Americans, and the subsequent protests, rallies and vigils that continue to take place make it clear that the conscience of our nation is on trial as questions of race and equality confront each and every one of us.” One of the most pressing questions relative to racial injustice and police reforms is how to address the underlying issue of police mistrust, particularly in the African-American and other minority communities.

Senate Bill 166 is a simple, effective way of addressing threats of police misconduct and helping to restore citizens’ trust in police. It not only seeks to deter officer misconduct but ensures that fellow officers who have knowledge of that misconduct alert their superiors. Police officers are public employees and their actions should be subject to reasonable accountability measures.

The Maryland General Assembly frequently considers and passes new laws regarding public accountability and this measure is a commonsense step in the right direction. It is for these reasons that the Conference seeks a favorable report on Senate Bill 166.

Levi SB 166 Testimony.pdf

Uploaded by: Levi, Deborah

Position: FAV

Deborah Katz Levi
Director of Special Litigation
Baltimore City Felony Trial Division
Maryland Office of the Public Defender

Written Testimony Senate Bill 166 – Duty to Report Misconduct

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I know, first hand, the importance that this requirement had on me when I summoned the courage to report judicial misconduct against a long-time judge. As one of the newest lawyers to my jurisdiction, it was the most courageous act I could take on, to report a veteran judge on the bench for his humiliating acts of misconduct that most clearly interfered with the administration of justice. I knew that to do so could create enemies, injure my career, and result in negative backlash, but my moral compass encouraged it, and my professional duty empowered it.

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While we are familiar with stories in our state's history that have ended tragically at the hands of police violence, including Anton Black and William Green, there are other less known instances that happen regularly, born out of a strong code of silence that law enforcement officers all too often afford each other. And anyone who tells you otherwise, that there is no code of silence amongst law enforcement, is simply not telling you the truth.

In fact, in acknowledgement of this truth, the strong and historical code of silence, police departments across the county have embraced new trainings aimed at dismantling it. Yet they realize that in order to so, in order to change that code, they must change their culture. But changing culture takes time and courage. Teaching young officers that they are empowered to report and intervene on a more senior officers' acts of misconduct is not something that is going to happen overnight, but it is something the legislature has the power to assist with.

In Baltimore and New York and in jurisdictions across the country, police departments are implementing the ABLE Training, Active Bystandership for Law Enforcement, which is aimed specifically at preventing and stopping harmful behavior by a fellow police officer. Imposing a criminal sanction on the failure to report misconduct only bolsters the officers' courage to report and will directly help change the culture of law enforcement from one that worked in the past to cover things up to one that works together to stop events from happening. As Baltimore Police Commissioner Michael Harrison said on NPR in July of 2020, this type of police training shifts loyalty from after a bad event happens, to its proper place, before the event take place. It helps officers hold each other accountable and keep each other out of trouble, by making the failure to report part of the trouble itself.

It is the sad and unfortunate reality that the courage to report misconduct is not often compelled by law enforcement. But it is the opposite reality that the legislature has the power to make it so, to pass the law that gives the younger, less senior, and less experienced officer the duty and the responsibility to report the misconduct they observe, so that they can enjoy the privilege of holding onto their role in their

profession, while also maintaining its integrity. As a result, I respectfully ask that the legislature pass Senate Bill 166 in its entirety. Thank you.

TESTIMONY FOR SB0166 Criminal Procedure - Police O

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0166
CRIMINAL PROCEDURE – POLICE OFFICERS – DUTY TO REPORT**

Bill Sponsor: Senator Sydnor

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0166 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

When it is discovered that a citizen knows about a crime that they don't report, they are charged as an accessory. Police Officers are not different from average citizens. They do not have the right to look the other way, particularly because they are in positions of power compared to average citizens. It is even more imperative that they report other officers who have committed crimes or gross abuses.

It is more than time that there were ramifications for remaining silent while citizens are victimized.

We support this bill and recommend a **FAVORABLE** report in committee.

MCPA-MSA_SB 166 Duty to Report Misconduct_Support

Uploaded by: Mansfield, Andrea

Position: FWA



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: January 21, 2021

RE: **SB 166 Criminal Procedure – Police Officers – Duty to Report Misconduct (Maryland police Accountability Act of 2021)**

POSITION: **SUPPORT WITH AMENDMENTS**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **SUPPORT SB 166 WITH AMENDMENTS**. This bill requires a police officer to report misconduct if the police officer has actual knowledge that another police officer has engaged in certain types of behavior – homicide, use of excessive force, sexual crime, theft, perjury fraud, evidence tampering. A police officer who knowingly and willfully violates the duty to report misconduct is guilty of a misdemeanor and on conviction is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine.

MCPA and MSA supports efforts to hold officers accountable and agree that if an officer is improperly carrying out his/her duties other officers must come forward with that information. However, MCPA and MSA would like to propose an alternate approach to address these matters.

Instead of an approach that includes criminal penalties such as those specified in SB 166 and other legislation, a uniform statewide use of force policy could be specified in statute that addresses an officer's duty to intervene, report misconduct, and other key elements. The actual policy could still be developed by the Maryland Police Training and Standards Commission providing flexibility for other requirements to be incorporated resulting from court decisions or best practices developed by certifying agencies.

Incorporating these concepts into mandated policies authorize the Chief or Sheriff to take appropriate disciplinary action should an officer not comply with specified training and policies. The behaviors specified in SB 166 are unacceptable and question an officer's integrity likely resulting in severe disciplinary and criminal actions if upheld. Chiefs and Sheriffs should be held accountable in disciplining their officers and adopting a statewide use of force policy to address these matters provides this opportunity. For these reasons, MCPA and MSA **SUPPORT SB 166 WITH AMENDMENTS** to mandate a statewide use of force policy that incorporates a duty to report misconduct requirement.

WDC Testimony-SB166_FINAL.pdf

Uploaded by: Tomasello, Beth

Position: FWA



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**SB0166 - Criminal Procedure-Police Officers-Duty to Report Misconduct
(The Maryland Police Accountability Act)
Judicial Proceedings Committee – January 21, 2021
SUPPORT WITH AMENDMENT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club** (WDC) for the 2021 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

WDC supports SB166 as an important step to create accountability for serious police misconduct.¹ However, WDC urges *amendment* to SB166 to replace the “objectively unreasonable” (HB0166 at line 21) standard to define “Excessive Force” (HB166 at line 20) with an *objectively necessary* (proposed amendment language) standard. This standard is proposed in **HB139-Law Enforcement Officers-Use of Force**. The “objectively unreasonable” (HB0166 at line 21) standard is problematic for many reasons, several of which we highlight below.

First, who is the “objectively reasonable” officer? Are they the officers in *Graham v. Conner* (referenced in the [Fiscal and Policy Note](#)) who injured and denied medical help to a victim in a diabetic crisis who did nothing more than enter and leave a convenience store quickly rather than wait in a long line to purchase a product containing glucose? Are they the officers who idly watched George Floyd and Eric Garner beg for their lives? The multitude of Americans protesting police violence tell us that a police officer's view of what is objectively reasonable is not necessarily what Americans think is objectively reasonable.

Second, the “objective reasonableness” standard considers neither the officer's nor the victim's race, which, within our structurally racist criminal system makes use of force against Black people too often seem reasonable. As Georgetown University Law professor Paul Butler wrote, “what happens in places like Ferguson, Missouri, and Baltimore, Maryland, where the police routinely harass and discriminate against African-Americans, is not a flaw in the criminal justice system. [They] are examples of how the system [of structural racism and racial subordination] are *supposed* to work.”²

Third, the “objective reasonableness” standard does not consider the offense the police believe the victim committed. Are there any circumstances in which it is ever reasonable to cause injury or death for suspicion of using a counterfeit \$20 bill or selling single cigarettes?

The Montgomery County Council recently adopted the “necessary” standard for use of force in Montgomery County Council [Bill 27-20E](#). This use-of-force law permits the use of force only when “necessary,” which “means that another reasonable law enforcement officer could objectively conclude, under the totality of the circumstances, that there was no alternative to the use of force” and that “such force is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person.”

We ask for your support for SB166 and urge the Committee to issue a favorable report with the amendment noted in this testimony.

Respectfully,

Diana Conway
President

¹ As an organization that primarily advocates for the interests of women and youth, WDC particularly appreciates the inclusion of sexual crimes as misconduct which fellow officers must report.

² Paul Butler, *Chokehold: Policing Black Men*, 6 (2017)

MSP Position Paper for SB 166.pdf

Uploaded by: Williams, Thomas

Position: FWA



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: January 21, 2021

BILL NUMBER: Senate Bill 166 **Position: Support with Amendments**

BILL TITLE: Criminal Procedure – Police Officers – Duty to Report Misconduct (Maryland Police Accountability Act)

REVIEW AND ANALYSIS:

This legislation seeks to require that a police officer who witnesses an act of misconduct by another police officer report the act to a supervisor or the chief of police. This legislation also establishes a criminal penalty for failure to report the witnessed act.

The Maryland State Police supports every officer's duty to intervene as well as their duty to report misconduct to the appropriate supervisor or Chief. While law enforcement agencies and the officers they employ should be held to a higher standard of conduct, this legislation narrowly focusses on five areas of police misconduct. As written, this legislation would not require a law enforcement officer to report a colleague who participated in a conspiracy to commit any of the enumerated acts. Nor would this legislation require a law enforcement officer to report any act not enumerated in the bill. For example, there would be no requirement to report extortion, conspiracy to commit one of the enumerated acts, harboring a fugitive, unlawful gun sales or any drug related crime.

The penalty for failure to report one of the enumerated offenses is up to five years imprisonment and/or a \$10,000 fine. In some of the enumerated crimes, the penalty is more severe than if the officer committed the crime himself. Failing to report a theft, for example, could send the otherwise innocent officer to prison for up to five years and the officer who committed the theft could be subject to as little as 90 days imprisonment and or a \$500 fine. Not to mention, the officer would be issued a criminal citation and released. This theft offense would have no impact on his employment status and the other officer, who failed to report, would be terminated.

As opposed to creating a criminal penalty for failure to report any sort of misconduct by a police officer, the Department believes that Administrative Sanctions would be a better remedy. There is already a disciplinary matrix employed by law enforcement agencies in Maryland. Depending on the severity of the misconduct, there should be a sliding scale of punishment. This scale could be from written reprimand and additional training for failing to report minor acts of misconduct, to decertification or termination for failing to report major misconduct.

Instead of subjecting an officer to a criminal charge and potential jail, a mandatory uniform statewide policy incorporating the use of force, duty to intervene, reporting of misconduct, and other key elements, developed by the Training and Standards Commission, should be required in law. This

State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

would give the Superintendent broad authority and discretion in dealing with officers who violate the policy. The Department believes this is truly the goal of both law enforcement and the citizens of Maryland, to ensure police officers are held accountable and remove those who are violating the oath to protect and serve.

For these reasons, the Department of State Police urges the Committee to give Senate Bill 166 a favorable report as amended.

SB166.pdf

Uploaded by: Plaut, Ari

Position: UNF



CLYDE BOATWRIGHT
STATE PRESIDENT

MARYLAND STATE LODGE
FRATERNAL ORDER OF POLICE[®]

8302 COVE ROAD BALTIMORE, MD 21222



KENNETH SCHUBERT
SECRETARY
EARL KRATSCH
TREASURER

The Honorable William C. Smith Jr., Chairman
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St. Annapolis, MD 21401 -1991

Dear Chairman Smith,

I am writing on behalf of the Maryland State Lodge of the Fraternal Order of Police in opposition of Senate Bill 166 (Criminal Procedure – Police Officers – Duty to Report Misconduct (Maryland Police Accountability Act))

While the women and men of the Fraternal Order of Police have long supported reforms aimed at ensuring accountability within our ranks, we simply cannot support proposed legislation which seeks to levy excessive punitive measures upon law enforcement officers. It is clear that the sole aim of SB166 is to impose a maximum penalty of imprisonment not exceeding five (5) years, or a fine not exceeding ten-thousand dollars (\$10,000.00), or both, for officers convicted of failing to report misconduct.

While many of Maryland's law enforcement agencies have already added policies mandating a duty to report misconduct, and we are not aware of any empirical evidence to suggest that officers are failing to report the misconduct of fellow officers, this bill is attempting to take the unprecedented and inexplicable step of imposing an extreme criminal penalty for police officers.

The Fraternal Order of Police understands the importance of laws which mandate the reporting of criminal conduct. We also understand the importance of fairness and equality related to criminal penalties. Criminal penalties for Police Officers should not exceed those of other professions with a mandatory reporting requirement.

The Maryland Legislature has an opportunity to show the rest of the Country that it enacts laws that are fair for all Marylanders, including those who wear a police uniform. For these reasons, the Maryland Fraternal Order of Police must oppose SB166.

Respectfully,

William R. Milam
First Vice President

Representing the Professional Police Officers of the State of Maryland

Senate Bill 166 - Police Officers Duty to Report.p

Uploaded by: Shellenberger, Scott

Position: UNF

Bill Number: SB 166
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed Requesting Amendments

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
OPPOSED REQUESTING AMENDMENTS OF SB 166
CRIMINAL PROCEDURE – POLICE OFFICERS – DUTY TO REPORT
MISCONDUCT (MARYLAND POLICE ACCOUNTABILITY ACT OF 2021)

I write in support of the majority of Senate Bill 166.

Senate Bill 166 creates a new crime that only applies to police officers. It would require one officer who has actual knowledge of another officer having committed an enumerated crime to report that officer to supervisors.

I accept the majority of this bill with one exception. Six of the enumerated crimes are well known, delineated in the statute, with a long history of what each crime stands for. I accept that part since the parameters of what an officer must do are well delineated.

However, including excessive force as a crime to report is wrong and unworkable. Excessive force is not an enumerated crime like the rest in this list. Excessive force should be a disciplinary matter and not a crime. Excessive force is a standard not a standalone crime.

I ask that you amend (B)(2) to exclude excessive force.

Other than that amendment, I can support this bill.

BaltimoreCounty_LOI_SB0166.pdf

Uploaded by: Conner, Charles

Position: INFO



JOHN A. OLSZEWSKI, JR.
County Executive

CHARLES R. CONNER III, ESQ.
Director of Government Affairs

JOEL N. BELLER
Deputy Director of Government Affairs

BILL NO.: **SB 166**

TITLE: **Criminal Procedure - Police Officers - Duty to Report
Misconduct (Maryland Police Accountability Act)**

SPONSOR: **Senator Sydnor**

COMMITTEE: **Judicial Proceedings**

POSITION: **LETTER OF INFORMATION**

DATE: **January 21, 2021**

Senate Bill 166 – Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland Police Accountability Act) is a bill that would require a police officer to report specified criminal conduct of another police officer to a supervisor or police chief upon knowledge of the criminal conduct.

In October 2020, Baltimore County passed the SMART Policing Act, a law that set forth policing procedures which modernized policing tactics, updated use of force policy, improved training and accountability, and expanded transparency in the department. The establishment of the duty to report misconduct was included as a system of accountability for law enforcement officers who misuse their position, and for those who fail to report these instances.

This legislation would effectively implement policies Baltimore County currently has in place at the State level, and would be adopted by jurisdictions that currently do not have such a law.

For more information, please contact Chuck Conner, Director of Government Affairs, at cconner@baltimorecountymd.gov.